IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 16911 of 2007(L)

PETITIONER:

P.ABDUL GAFOOR, S/O.P.ABDU RAHIMAN,
PERUMBALLI HOUSE, KARUVAMBRAM, MANGALASSERY,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT:

THE MANJERI MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.M.P.ASOK KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C). NO. 16911 OF 2007

Dated this the 20th day of November, 2007

J U D G M E N T

Under challenge in this writ petition is Ext.P4 order passed by the Municipality, by which the Municipality refused to entertain Ext.P2 application submitted by the petitioner for making certain alterations to an existing residential building. The reason stated in Ext.P4 is that the Municipality is a party to the W.P.(C) No.36725/2004, a writ petition filed by the petitioner complaining that an illegal quarry is being permitted within the limits of the Municipality. According to Ext.P4 since reference is made to the petitioner's residential building in W.P.(C) No.36725/2004, the Municipality will not be able to entertain the petitioner's application for building “constructions”. But, as could be discerned from Ext.P2, the petitioner's application is not for construction of a new building, it is only for effecting certain alterations and additions to an existing residential building. That building is not subject matter of W.P.(C) No.36725/2004.

2. Sri. M.P.Asok Kumar, learned standing counsel for the Municipality, submits that the very case of the petitioner in W.P.(C) 36725 is that the operation of a quarry will endanger the very residential building in respect of which Ext.P2 has been submitted. That being the position, the Municipality should not be insisted upon to grant permission, as applied for in Ext.P2, as on the petitioner’s own showing the existence of the

building in proximity to the objectionable quarry is dangerous. The stand taken by the Municipality is too technical for receiving acceptance. Petitioner's building is an existing building. The case of the petitioner is that he has no other place to live in. Petitioner takes the risk of continuing residence in the building even after its extension as per Ext.P2.

3. Under the above circumstances, I quash Ext.P4 and direct the Municipality to entertain Ext.P4 and pass fresh orders on the same in accordance with law. If Ext.P2 is an application for effecting alterations or additions to a existing residential building, the Municipality will not be influenced at all by the pendency of the W.P.(C) No.36725/2004. The Municipality will ensure that compliance of the above direction is made at the earliest and at any rate, within one month of receiving a copy of this judgment.

4. However, considering the rival submissions addressed before me, it is made clear that the petitioner will not be entitled to blame the Municipality for danger, if any, caused to the portions of the building extended pursuant to Ext.P2.

PIUS C. KURIAKOSE, JUDGE

vps